

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY

WASTE MANAGEMENT

PREAMBLE

1. Sections Affected

R18-8-260
R18-8-261
R18-8-262
R18-8-263
R18-8-264
R18-8-265
R18-8-266
R18-8-268
R18-8-270
R18-8-271
R18-8-273
R18-8-280

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
New Section
Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 49-922
Implementing statute: A.R.S. § 49-922

3. The effective date for the rules.

June 13, 1996

4. A list of all previous notices that appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening:

1 A.A.R. 1604, September 15, 1995

Notice of Proposed Rulemaking:

2 A.A.R. 9, January 5, 1996

5. The name and address of agency personnel with whom persons may communicate regarding the rule:

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

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- A. General information about the incorporations by reference as of July 1, 1995.
- B. Descriptions of the revisions incorporated by reference.
- C. Summary of the incorporations by reference.
- D. Summary of state specific changes.

THE EXPLANATION OF THE RULE

A. General Information about the Incorporations by Reference as of July 1, 1995.

Every year the Department of Environmental Quality (ADEQ) amends the state's hazardous waste rules. The state's hazardous waste rules are generally comprised of the federal regulations, authorized by Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), which are incorporated by reference. The hazardous waste rules are well established and have been effective since 1984. This year's amendments cover changes in the federal regulations promulgated between July 2, 1994, and July 1, 1995.

For Arizona to be authorized to manage the federal hazardous waste program, ADEQ must either incorporate by reference the federal regulations or write state rules that are equivalent to and consistent with federal regulations. Incorporating the federal regulations will keep Arizona's hazardous waste management program funded by the United States Environmental Protection Agency (EPA) and in compliance with A.R.S. § 49-922. The EPA requires that Arizona be re-authorized to maintain the authority to manage the federal hazardous waste program in lieu of the EPA administering the program in Arizona. ADEQ received final RCRA authorization in 1985 and continues to apply for re-authorization to keep current with changes to federal regulations. Adoption of federal regulations also promotes compliance uniformity among states. Most of the federal regulations incorporated by reference in this rulemaking are required for re-authorization.

The adoption of the following amendments to the federal regulations is optional, but these amendments are considered to be improvements to the hazardous waste program and, therefore, are incorporated in this rulemaking. An explanation of each follows:

- 1. The exclusion from the RCRA regulatory definition of solid waste certain in-process recycled secondary materials utilized by the petroleum industry.
- 2. The standards for the management of the universal wastes.
- 3. The definition of solid waste found in the federal regulation promulgated September 19, 1994. This definition reduces the scope of the federal program by broadening the closed loop recycling exclusion.

The following change is specific to Arizona:

Clarification of R18-8-270 to expressly state that the processing of an application for a partial or final closure plan includes the review and evaluation of the closure report.

To identify the changes made to the incorporations by reference in the rules, the date has been changed from July 1, 1994 to July 1, 1995, in subsection (A) of most sections. Subsection (A) of Sections R18-8-260 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271 incorporates by reference the federal regulations published in 40 CFR 260 through 266, 268, 270, and 274 as of July 1, 1995, with certain exceptions. Section 273 is a new Section which is the Standards for Universal Waste Management. Sections 269 and 280 are state rules that do not incorporate federal regulations.

The purpose of this rulemaking is primarily to incorporate the text of federal regulations for re-authorization by the EPA. Modifications to the text incorporated by reference are intended to make the language consistent with state terminology, and not intended to make substantive changes to the content. For example, the federal regulations incorporated by reference refer to the "EPA" because it is the implementing agency. Yet, Arizona is authorized to implement and enforce the RCRA program contained in the incorporated regulations, therefore "EPA" is usually replaced with "ADEQ" when referring to the agency that implements the regulations. Because the changes to the federal regulations are generally to tailor the language to ADEQ, the changes to the incorporated text are not intended to have any additional impact beyond the federal regulation.

B. Descriptions of the revisions incorporated by reference.

- 1. Regulation Title: Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste. This regulation excludes from the RCRA regulatory definition of solid waste certain in-process recycled secondary materials utilized by the petroleum refining industry. Specifically, the regulation states that oil recovered from petroleum refinery wastewaters and from other sources, both on-site and off-site, is excluded from the regulatory definition of solid waste if it is subsequently inserted (along with normal process streams) into the petroleum refining process prior to crude distillation or catalytic cracking. This regulation can be found in 59 FR 38536, July 28, 1994, and is a deregulatory action.
- 2. Regulation Title: Standards for Management of Specific Hazardous Wastes; Amendment to Subpart C--Recyclable Materials Used in a Manner Constituting Disposal. This regulation amends 40 CFR 266.20, which contains provisions for conditionally exempting from Subtitle C regulations, some hazardous waste-derived products used in a manner con-

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stituting disposal (i.e., applied to or placed on land). The amendment to the federal regulations provides that slag residues produced from the high temperature metal recovery (HTMR) treatment of electric arc furnace dust (K061), steel finishing pickle liquor (K062), and electroplating sludges (F006) are not exempt from RCRA Subtitle C regulations.

This regulation effectively prohibits anti-skid or deicing uses of HTMR slag derived from K061, K062, and F006 as waste-derived products placed on the land, unless there is compliance with all Subtitle C standards applicable to land disposal. This regulation does not prohibit other uses of these slag residues that meet § 266.20(b) requirements. The amended regulation also does not prevent the disposal of HTMR slag in a Subtitle D unit if the residuals can meet the risk-based exclusion levels specified in § 261.3(c)(2). This regulation can be found in 59 FR 43496, August 24, 1994.

3. Regulation Title: Testing and Monitoring Activities, Land Disposal Restrictions Corrections. This regulation corrects the federal regulations which were published Tuesday, August 31, 1993 ("Hazardous Waste Management System; Testing and Monitoring Activities", 58 FR 46040). This corrects the unintended removal of text from 40 CFR 268.7(a), which set out the generator waste analysis and recordkeeping requirements of the Land Disposal Restrictions (LDR). This regulation can be found in 59 FR 47980, September 19, 1994.
4. Regulation Title: Land Disposal Restrictions Phase II--Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes. As part of the LDR program, this regulation contains treatment standards for the newly identified organic toxicity characteristic (TC) wastes (except those managed in Clean Water Act (CWA) systems, CWA- equivalent systems, or Class I Safe Drinking Water Act (SDWA) injection wells), and for all newly listed coke by-product and chlorotoluene production wastes. The required treatment standards for these wastes must be met before they are land disposed. EPA is also requiring ignitable characteristic wastes with a high total organic carbon (TOC) content and toxic characteristic pesticide wastes, that are being disposed of in Class I nonhazardous waste injection wells, to either be injected into a well that is subject to a no-migration determination, or be treated by the designated LDR treatment method.

The regulation makes a major modification to the LDR program in order to simplify and provide consistency in the requirements. The regulation establishes a single set of requirements, referred to as universal treatment standards, that apply to most hazardous wastes. The regulation also simplifies the LDR program by reducing paperwork for the regulated community, and improving guidance to make compliance easier. EPA is publishing clarifying guidance regarding treatability variances, which largely restates previous Agency statements. Finally, future regulations to the hazardous waste recycling regulations will allow streamlined regulatory decisions to be made regarding certain types of recycling activities. In this regulation, the definition of "solid waste" has been changed to broaden the closed loop recycling exclusion and, therefore, the definition is less stringent. ADEQ has the option to adopt less stringent federal regulations for the RCRA program. ADEQ supports recycling, and believes the broadened exclusion is still protective of human health and the environment because the closed loop recycling does not provide additional exposure of wastes to humans or the environment. Therefore the new definition is included in this rulemaking. This regulation can be found in 59 FR 47982, September 19, 1994.
5. Regulation Title: Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emissions Standards for Tanks, Surface Impoundments and Containers. This regulation promulgates air standards that will further reduce organic emissions from hazardous waste management activities. The air standards apply to owners and operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDFs) subject to RCRA Subtitle C permitting requirements and to certain hazardous waste generators accumulating waste on-site in RCRA permit-exempt tanks and containers. Under these standards, air emission controls must be used for tanks, surface impoundments, and containers in which hazardous waste is placed, on or after June 5, 1995, except under certain conditions specified in the regulation. Air emission control requirements are also added to the RCRA permit terms and provisions specified for TSDF miscellaneous units. In addition, this regulation establishes a new EPA reference test method (Method 25E) to determine the organic vapor pressure of a waste. This regulation can be found in 59 FR 62896, December 6, 1994. The effective date of this regulation has been postponed until June 6, 1996. This regulation can be found in 60 FR 56952, November 13, 1995.
6. Regulation Title: Land Disposal Restrictions Phase II--Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes. This regulation corrects errors and clarifies the language in the preamble and regulation of the September 19, 1994, federal regulation. This amendment does not contain any new requirements, it corrects grammatical errors. This regulation can be found in 60 FR 242, dated January 3, 1995.
7. Regulation Title: Hazardous Waste Management System; Testing and Monitoring Activities. This regulation amends Subtitle C of RCRA, for testing and monitoring activities. This amendment adds new and revised methods as Update II to the Third Edition of the EPA-approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. It also incorporates the SW-846 Third Edition, as amended by Updates I (promulgated August 31, 1993), II, and IIA (promulgated January 4, 1994, as part of the wood surface protection regulation), into 40 CFR 260.11(a) for use in complying with the requirements of Subtitle C of RCRA. The intent of this amendment is to provide better and more complete analytical technologies for RCRA-related testing and thus promote cost effectiveness and flexibility in choosing analytical test methods. This regulation can be found in 60 FR 3089, January 13, 1995.
8. Regulation Title: Hazardous Waste Management System: Carbamate Production Identification and Listing of Hazardous

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Waste; and CERCLA Hazardous Substances Designation and Reportable Quantities. This regulation amends RCRA to reduce hazards to human health and the environment from the ongoing manufacture of carbamate chemicals, which are formulated for use as pesticides and used in the production of synthetic rubber. This regulation lists 6 hazardous wastes generated during the production of carbamate chemicals. This regulation provides an exemption from the definition of hazardous waste for certain wastes, if the generator demonstrates that hazardous air pollutants are not being discharged or volatilized during waste treatment. This regulation exempts from the definition of "hazardous waste", biological treatment sludges generated from the treatment of certain wastes provided the sludges do not display any of the characteristics of a hazardous waste as defined in R18-8-261. This regulation also adds 58 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded and to the list of hazardous constituents upon which listing determinations are based.

This regulation is promulgated pursuant to §§ 3001(e)(2) and 3001(b)(1) of HSWA which direct EPA to make a hazardous waste listing determination for carbamate wastes. The effect of listing these wastes will be to subject them to regulation as hazardous wastes under Subtitle C of RCRA; and the notification requirements of Section 103 under CERCLA. EPA is not amending the regulation at this time to adjust the 1-pound statutory reportable quantities for these substances. This regulation can be found in 60 FR 7824, January 9, 1995.

9. Regulation Title: Hazardous Waste Management System: Testing and Monitoring Activities. This regulation amends RCRA testing and monitoring activities. This amendment clarifies the temperature requirement for pH measurements of highly alkaline wastes and adds Method 9040B (pH Electrometric Measurement) and Method 9045C (Soil and Waste pH) to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846. This amendment will provide a better and more complete analytical technology for RCRA testing in support of hazardous waste identification under the corrosivity characteristic (40 CFR 261.22, see R18-8-261). This regulation can be found in 60 FR17001, April 4, 1995.
10. Regulation Title: Hazardous Waste Management System: Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities. This regulation corrects minor errors to the federal regulation promulgated February 9, 1995 (60 FR 7824) which regulates the manufacture of carbamate chemicals. This regulation can be found in 60 FR9165, April 17, 1995.
11. Regulation Title: Universal Waste Rule (Hazardous Waste Management System: Modification of the Hazardous Waste Recycling Regulatory Program). New streamlined hazardous waste management regulations have been promulgated which govern the collection and management of certain widely generated hazardous wastes (hazardous waste batteries, hazardous waste pesticides that are either recalled or collected in waste pesticide collection programs, and mercury-containing thermostats), known as universal wastes.

By reducing certain current RCRA Subtitle C regulatory requirements, this regulation will encourage state and local governments and manufacturers to establish environmentally-sound collection programs, and retailers to participate in them. Although households and small businesses produce much of these wastes, retailers have been reluctant to accept them because of concerns that some of the wastes might be from regulated hazardous waste generators. If that were the case, all of the collected wastes would be subject to full RCRA Subtitle C regulation.

In contrast, under the streamlined system, retailers and others who collect and handle these wastes would not have to comply with burdensome RCRA Subtitle C paperwork requirements and certain technical standards. Despite this regulatory reduction, however, this regulation is actually expected to increase environmental protection by increasing the availability of collection and recycling programs that will ensure that these wastes go to hazardous waste recycling and disposal facilities rather than to municipal solid waste landfills or incinerators.

This regulation will also serve as a model for adding other similar wastes in the future by allowing a petition process. When states adopt the regulation, they can also pick up the petition process. In this rule package, Arizona is picking up the petition process. Adopting the petition process, as part of the universal waste rule, enhances ADEQ's flexibility by allowing ADEQ to add wastes to its universal waste program without requiring the wastes to be added at the federal level. This regulation can be found in 60 FR 25492, May 11, 1995, and is deregulatory.

12. Regulation Title: Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators: Organic Air Emission Standards for Tank, Surface Impoundments, and Containers. EPA has postponed the effective date for the December 6, 1994, regulation on organic air emission standards for tanks, surface impoundments, and containers. The EPA plans to publish a subsequent Federal Register document to clarify provisions of the regulation. To ensure notice and options are clear to affected facilities, and that all affected facilities have time to make alterations in their compliance plan, the effective date of the regulation is postponed until December 6, 1995. This regulation can be found in 60 FR 26828, May 19, 1995.
13. Regulation Title: Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs: Removal of Legally Obsolete Regulations. This regulation removes from the Code of Federal Regulations (CFR) several sections of the CFR pertaining to hazardous waste, solid waste, oil discharges and the Superfund program because the federal regulations are no longer legally in effect. Deleting these sections from the CFR will clarify the legal status of EPA's regulations for both the regulated community and the public. This regulation can be found in 60 FR 3312, dated June 29, 1995.

C. Summary of the incorporation by references.

The regulations incorporated by reference are required for re-authorization except for the following:

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1. The exclusion of certain in-process recycled secondary materials utilized by the petroleum refining industry. (see B1)
2. The definition of solid waste.(see B4)
3. The standards for universal waste management. (see B11)

These optional federal regulations are incorporated by reference because they promote the efficient and effective management of the hazardous waste program in Arizona.

D. Summary of state-specific changes.

ADEQ is proposing changes to R18-8-270(G)(3)(c) and (G)(4) regarding fees for approval of facility or site closure plans. This regulation clarifies that the review and approval of the closure reports are a part of the application process for the closure plans. ADEQ believes the existing rule implies that this is included, but to preclude any misunderstanding by the applicant, the clarifying language is added. Currently, ADEQ reviews a "closure plan" which is used to direct the facility in the process of "how to" properly close, then after closure is completed, ADEQ reviews the "closure report" which states "how" the closure was performed. The closure report is very important to ensure all closure activities were performed properly.

A.R.S. § 49-922(B)(5) requires the director to establish and collect a reasonable fee from the applicant to cover the cost of administrative services and other expenses associated with evaluating an application and issuing or denying a permit. A person who obtains a hazardous waste permit will at some point have to apply for closure. To perform partial or full closure, a closure plan must be reviewed and approved by ADEQ. To ensure that the actions outlined in the closure plan have been performed properly, ADEQ must scrutinize the closure report in detail. Therefore, it should be inferred that review of the closure report is included as a part of a partial or full facility or site closure. This regulation does not change the scope of the rule, it merely clarifies an imprecise area in the current rule.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

Chapter 8. Department of Environmental

Quality Waste Management

Article 2. Hazardous Wastes

The benefit of this rulemaking is that ADEQ will be re-authorized to implement the federal hazardous waste program and receive federal funding of about \$2 million per year for its effort. In order for ADEQ to maintain implementation authority, EPA must re-authorize Arizona's program on a regular basis.

This rule package has 3 categories of changes. The 1st category is the required federal regulations, the 2nd category contains optional federal regulations, and the 3rd category is an ADEQ initiated change specific to Arizona. The 3 categories have distinctive probable costs.

The incorporation of the required federal regulations does not pose an incremental economic impact to Arizona because the EPA will enforce the federal regulations if Arizona does not.

The 2nd category consists of the following changes:

The petroleum refinery exemption.

The definition of solid waste.

The standards for management of universal wastes.

The postponed effective date for the federal regulation on Hazardous Waste Treatment, Storage and Disposal Facilities and Hazardous Waste Generators, Organic, Air Emission Standards for Tanks, Surface Impoundments, and Containers.

Businesses are very interested in Arizona adopting these rules, because they provide some regulatory relief. ADEQ believes these rules protect public health and the environment while offering less costly requirements for business. Therefore, ADEQ is exercising its option to include these rules in this rulemaking. The cost of these rules are evaluated separately.

The 1st optional regulation incorporated by reference excludes from the RCRA regulatory definition of solid waste certain in-process recycled secondary materials utilized by the petroleum refining industry. Specifically, the rule states that oil recovered from petroleum refinery wastewaters and from other sources, both on-site and off-site, is excluded from the regulatory definition of solid waste if it is subsequently inserted (along with normal process streams) into the petroleum refining process prior to crude distillation or catalytic cracking. The impact of this rule on businesses of any size that perform petroleum refining is that the recycled secondary materials do not need to be regulated as a solid waste. This enables the business to reuse a waste without requirements for disposal or treatment.

This incorporated federal regulation is expected to bring some savings to the 2 refineries operating in Arizona. ADEQ supports less regulation if there is no anticipated adverse affect on the public health and the environment.

The 2nd optional regulation incorporated by reference is known as the standards for management of universal wastes. This rule streamlines hazardous waste management regulations for certain widely generated wastes identified as universal wastes. This rule allows hazardous waste batteries, certain hazardous waste pesticides, and mercury-containing thermostats to be exempt from the

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record keeping and reporting required for hazardous wastes. The current RCRA regulations have been a major impediment to national collection for these wastes by making reporting, recording, and accumulation cumbersome. Retail stores have indicated a desire to assist with the collection, but the regulatory burden currently in place requires reporting, accumulation limits, manifesting, and assignment of an EPA identification number. This rule increases the accumulation limits that trigger reporting requirements. The only limitation placed upon the transporters is that the entity cannot treat, dilute or dispose of the waste. Due to the reduction in reporting, and the expansion of the storage time frames, this rule results in a savings to any collector, handler, or transporter of a universal waste.

Either EPA or ADEQ may add wastes to the definition of universal waste, in the future. A petition process which triggers a rule-making is included through which additional wastes could be added to the universal waste regulations. This is most beneficial for businesses who handle wastes similar to batteries, mercury contained thermostats, and the universal waste pesticides. It is anticipated that ADEQ will be petitioned to include fluorescent light bulbs as a universal waste. ADEQ estimates that the cost in staff and time to process the petition by ADEQ will be minimal.

The remaining cost to analyze is the savings to business weighed against the potential health impact to the public. Despite this regulatory reduction, the rule is expected to increase environmental protection by increasing the availability of collection and recycling facilities thus providing an alternative to many generators of universal wastes who currently dispose of the wastes in municipal solid waste landfills and incinerators. The standards for the management of universal wastes are not anticipated to impose any new costs or be a greater risk to human health or the environment.

The 3rd optional incorporation of a federal regulation is the change to the definition of solid waste. The definition of "solid waste" has been changed to broaden the closed loop recycling exclusion, making the definition less stringent. ADEQ believes this change will properly protect human health and the environment, and will not impose an additional enforcement cost on ADEQ. This change excludes from the solid waste definition the residues of a secondary process of "closed-loop" recycling, if the residues are reinserted into the process. The modification is based upon EPA discretion to consider the manner in which a secondary material is managed in determining RCRA jurisdiction. The EPA considered whether the material was part of the waste management problem and the potential for the waste to pose a hazard to human health or the environment when recycled. This broadened definition is intended to reduce the cost of managing waste while increasing efficiency. ADEQ does not expect any incremental costs from this rule.

The 3rd category of change in this rule package is a state-initiated change which affects the recovery of administrative costs associated with permit related activities. An application for a closure permit has 2 elements, 1) review and approval of the closure plan and 2) review and approval of the closure report. The closure plan includes tasks to ensure that a hazardous waste facility or site is not left in a condition that would endanger human health or the environment, and is prepared prior to closure of the facility or site. The closure report is verification that the closure plan was properly performed. While A.R.S. § 49-922(B)(5) mandates the director to collect reasonable fees for these types of services, R18-8-270(G)(3) and (4) do not clearly state what the fee for processing the closure permit includes. The change to the rule expressly states that the fee for processing a closure permit includes both the review and approval of the closure plan and the closure report.

A closure report generally takes 40 hours to review and approve, if there is no remediation. The 40 hours includes meetings, site visits, notices of deficiencies, and confirmatory sampling. ADEQ has developed an estimate of the number of closure reports expected to be reviewed and approved during the next 3 years. Some storage facilities plan to close a portion of the facility (partial closure) such as a storage tank. ADEQ anticipates 12 closures in 1996, 5 closures in 1997, and 4 closures in 1998. The current cost per hour for this administrative review and approval is \$48. This results in a cost of approximately \$2,000 per closure for review and approval of the closure report. Each closure plan (excluding the closure report) is currently costing the applicant about \$2,500. Therefore, this rule will include review and approval of both the plan and the report totalling approximately \$4,500. Entities expected to be affected by the review are facilities like Motorola, Laidlaw, Tally Industries, Unidynamics, and Fort Huachuca. As a result of this rule, ADEQ will recover approximately \$24,000 in 1996, \$10,000 in 1997, and \$8,000 in 1998. The benefit of the review of the closure report is confirmation (an enforcement tool) that the closure plan was followed, that no releases occurred, and, therefore, that the public and the environment are protected.

The fees from this rule will generate additional revenues. ADEQ does not need additional personnel resources to perform review of the closure report. ADEQ is currently reviewing the closure report without charging the closed facility or site, causing other funds (federal grant, state general fund) which support the state's hazardous waste program to subsidize the closure report review. Since the number of closures per year is difficult to predict, the highest number of closures will be used for evaluation. When passing the cost of \$24,000 per year to the consumers, it is doubtful the consumer will even notice an increase in the products or services from the businesses as a result of the cost to the facility for ADEQ to review the closure report. There is no special adjustment for small business because the size of the business does not correspond to the magnitude of effort for closure. A safe, release-free closure must be performed regardless of the type of business, its revenues, or the number of employees.

This modification will shift the cost of review of the closure report from all taxpayers to the customers of the companies performing the closure. ADEQ believes that the benefits of the cost recovery (to ADEQ) for review and approval of the closure report outweigh the cost imposed on the regulated community by this rule change.

9. A description of the changes between the proposed rules, and final rules:

The 1st change came from the EPA. The change is noted throughout the rule text. The EPA requested that every time the rule cites a federal regulation, the cross reference to the state citation should use the phrase "as incorporated by" rather than "see." An example of 1 of the changes follows:

E. § 260.10, entitled "Definitions", is amended by adding all definitions from § 270.2 to this Section (see as incorporated by

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R18-8-260 and R18-8-270), including the following changes, applicable throughout this Article unless specified otherwise:

This does not qualify as a substantial change because the change is wording is for clarity, and the change does not in any way alter the regulated community's requirements within the rules.

The 2nd change is found in R18-8-264 and R18-8-265. This incorporates the Federal Register containing the postponed date from December 6, 1995 until June 6, 1996, for compliance with air emission control requirements under the Subpart CC standards of RCRA. The changes to the rule text follow:

R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

- A. All of 40 CFR 264 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995, (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149 - 264.150, and 264.301(l), are incorporated ~~herein~~ by reference, and modified by the following subsections of R18-8-264, and are on file with the DEQ and the Office of the Secretary of State. In addition, all amendments to Part 264 and its appendices relating to hazardous waste treatment, storage, and disposal facilities and hazardous waste generators as amended at 60 FR 56952, on November 13, 1995, are incorporated by reference and are on file with DEQ and the Office of Secretary of State.

R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

- A. All of 40 CFR 265 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, are incorporated ~~herein~~ by reference and modified by the following subsections of R18-8-265, and are on file with the DEQ and the Office of the Secretary of State. In addition, all amendments to Part 265 and its appendices relating to hazardous waste treatment, storage, and disposal facilities and hazardous waste generators as amended at 60 FR 56952, on November 13, 1995, are incorporated by reference and are on file with DEQ and the Office of Secretary of State.

This change should not be a substantial change because the proposed rule extended the requirement date for this regulation, however after the rule was proposed, the EPA again postponed the effective date of this rule. Therefore, the regulated community has been notified of the initial postponed date in the proposed rule, and this change is the same subject matter contained in the proposed rule.

All other changes were made to correct errors in the Arizona Administrative Code.

10. A summary of the principal comments and the agency response to them:

There were 2 types of comments. The 1st type of comment was received by phone calls and came from multiple sources, i.e. government and private industry. The comments supported the adoption of 40 CFR 273, the "Management of Universal Wastes." These supportive comments did not request a change to the rule.

The 2nd type of comment came from the dry cleaning businesses. This commenter requested ADEQ include a federal regulation that was published in the Federal Register November 13, 1995, after the date range in the proposed rule. The federal regulation postpones the effective date on Hazardous Waste Treatment, Storage and Disposal Facilities and Hazardous Waste Generators, Organic, Air Emission Standards for Tanks, Surface Impoundments, and Containers until June 6, 1996. ADEQ does not intend to be more stringent than the RCRA regulations, therefore, the postponed date is included in this rulemaking by incorporating this federal regulation into the adopted rule. The regulation was postponed because of the anticipated economic impact on businesses such as the dry cleaning business. ADEQ desires to pass this extension date onto the regulated businesses.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

40 CFR 260	R18-8-260
40 CFR 261	R18-8-261
40 CFR 262	R18-8-262
40 CFR 263	R18-8-263
40 CFR 264, <u>60 FR 56952, on November 13, 1995</u>	R18-8-264
40 CFR 265, <u>60 FR 56952, on November 13, 1995</u>	R18-8-265
40 CFR 266	R18-8-266
40 CFR 268	R18-8-268
40 CFR 270	R18-8-270
40 CFR 124	R18-8-271
40 CFR 273	R18-8-273

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency and the adoption of these final rules:

Not applicable.

14. The full text of the rule:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY

WASTE MANAGEMENT

ARTICLE 2. HAZARDOUS WASTES

- R18-8-260. Hazardous Waste Management System: General
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ARTICLE 2. HAZARDOUS WASTES

R18-8-260. Hazardous Waste Management System: General

- A. ~~The purpose of this Article is to establish rules and criteria for the identification, storage, treatment, transportation, and disposal of hazardous wastes which are generated, transported, treated, or disposed within the state of Arizona. Federal and state statutes and regulations cited in these rules are those adopted as of July 1, 1994 1995, unless otherwise noted. 40 CFR 124, 260 through 266, 268, and 270, and 273, or parts thereof, are adopted by reference when so noted. Federal statutes and regulations that are cited within 40 CFR 2, 124, and 260 through 270 that are not adopted by reference may be used as guidance in interpreting federal regulatory language.~~
- B. Any reference or citation to 40 CFR 124, 260 through 266, ~~and 270, and 273,~~ or parts thereof, appearing in the body of this Article and regulations incorporated by reference, is inclusive of the new, amended, or replaced paragraphs and wording presented in this Article. When federal regulatory language that has been adopted by reference has been amended, brackets [] enclose the new language. ~~Where appropriate, and to provide for ease of reading this Article, references to CFR Section numbers and form are maintained.~~
- C. All of 40 CFR 260 and ~~the accompanying appendices appendix~~, as amended as of July 1, 1994 1995, (and no future editions), with the exception of §§ 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33, are incorporated ~~herein~~ by reference and modified by the following subsections of R18-8-260 and are on file with the Department of Environmental Quality (DEQ) and the Office of the Secretary of State.
- D. No change.
 - 1. No change
 - 2. No change
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.

- e. No change.
 - i. No change
 - (1) No change
 - (2) The Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination as part of the completeness review pursuant to § 124.3(c) (see as incorporated by R18-8-271(C)).
 - ii. No change.
 - iii. No change.
- f. No change

E. § 260.10, entitled "Definitions", is amended by adding all definitions from § 270.2 to this Section (see as incorporated by R18-8-260 and R18-8-270), including the following changes, applicable throughout this Article unless specified otherwise:

- 1. No change.
- 2. ["Application" means the standard United States Environmental Protection Agency forms for applying for a permit, including any additions, revisions or modifications to the forms. Application also includes the information required pursuant to §§ 270.14 through 270.29 (see as incorporated by R18-8-270, regarding the contents of a Part B HWM facility permit application).]
- 3. No change.
- 4. ["Chapter" means "Article" except in § 264.52(b), see as incorporated by R18-8-264, and § 265.52(b), see as incorporated by R18-8-265.]
- 5. No change.
- 6. No change.
- 7. No change.
- 8. No change.
- 9. No change.
- 10. ["Draft permit" means a document prepared under § 124.6 (see as incorporated by R18-8-271(E)) indicating the Director's tentative decision to issue, deny, modify, revoke, reissue, or terminate a permit. A denial of a request for modification, revocation, reissuance or termination, as discussed in § 124.5 (see as incorporated by R18-8-271(D)), is not a draft permit.]
- 11. ["Emergency permit" means a permit that is issued in accordance with § 270.61 (see as incorporated by R18-8-270).]
- 12. ["EPA", "Environmental Protection Agency", "United States Environmental Protection Agency", "U.S. EPA", "EPA HQ", "EPA Regions", and "Agency" mean the DEQ with the following exceptions:
 - a. Any references to EPA identification numbers;
 - b. Any references to EPA hazardous waste numbers;
 - c. Any reference to EPA test methods or documents;
 - d. Any reference to EPA forms;
 - e. Any reference to EPA publications;
 - f. Any reference to EPA manuals;
 - g. Any reference to EPA guidance;
 - h. Any reference to EPA Acknowledgment of Consent; References in §§ 260.2(b) (see as incorporated by R18-8-260(D)(2)); 260.10 (definitions of "Administrator", "EPA region", "Federal agency", "Person", and "Regional

- Administrator" (see as incorporated by R18-8-260(E));
- 260, Appendix I (see as incorporated by R18-8-260(C));
- 260.11(a) (see as incorporated by R18-8-260);
- 261, Appendix IX (see as incorporated by R18-8-261(A));
- 262.32(b) (see as incorporated by R18-8-262(A));
- 262.50 through 262.57 (see as incorporated by R18-8-262(A));
- 262, Appendix (see as incorporated by R18-8-262(A));
- 263.10(a) Note (see as incorporated by R18-8-263(A));
- 268.1(e)(3) (see as incorporated by R18-8-268);
- 268.5, 268.6, 268.42(b), and 268.44, which are non-delegable to the state of Arizona (see as incorporated by R18-8-268);
- 270.1(a)(1) (see as incorporated by R18-8-270);
- 270.1(b) (see as incorporated by R18-8-270(B));
- 270.2 (definitions of "Administrator", "Approved program or Approved state", "Director", "Environmental Protection Agency", "EPA", "Final authorization", "Permit", "Person", "Regional Administrator", and "State/EPA agreement") (see as incorporated by R18-8-270(A));
- 270.3 (see as incorporated by R18-8-270(A));
- 270.5 (see as incorporated by R18-8-270(A));
- 270.10(e)(1) through (2) (see as incorporated by R18-8-270(A) and R18-8-270(D));
- 270.11(a)(3) (see as incorporated by R18-8-270(A));
- 270.32(a) and (c) (see as incorporated by R18-8-270(M) and R18-8-270(O));
- 270.51 (see as incorporated by R18-8-270(P));
- 270.72(a)(5) and (b)(5) (see as incorporated by R18-8-270(A));
- 124.1(f) (see as incorporated by R18-8-271(B));
- 124.5(d) (see as incorporated by R18-8-271(D));
- 124.6(e) (see as incorporated by R18-8-271(E));
- 124.10(c)(1)(ii) (see as incorporated by R18-8-271(I)); and 124.13 (see as incorporated by R18-8-271(L)).]
13. ["Federal Register" means a daily or weekly major local newspaper of general circulation, within the area affected by the facility or activity, except in §§ 260.11(b) (see as incorporated by R18-8-260), and 270.10(e)(2) (see as incorporated by R18-8-270(D)).]
 14. ["HWMA" or "State HWMA" means the State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended.]
 15. ["Hazardous Waste Management facility" or "HWM facility" means any facility or activity, including land or appurtenances thereto, that is subject to regulation under this Article.]
 16. ["Key employee" means any person employed by an applicant or permittee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the applicant or permittee. Key employee does not include an employee exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste.]
 17. ["National" means "state" in §§ 264.1(a) and 265.1(a) (see as incorporated by R18-8-264 and R18-8-265).]
 18. ["Off-site" means any site that is not on-site.]
 19. ["Permit" means an authorization, license, or equivalent control document issued by the DEQ to implement the requirements of this Article. Permit includes "permit-by-rule" in § 270.60 (see as incorporated by R18-8-270) and "emergency permit" in § 270.61 (see as incorporated by R18-8-270), and it does not include interim status as in § 270.70 (see as incorporated by R18-8-270) or any permit which has not yet been the subject of final action, such as a "draft permit" or a "proposed permit".]
 20. ["Permit-by-rule" means a provision of these rules stating that a facility or activity is considered to have a HWM facility permit if it meets the requirements of the provision.]
 21. ["Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a HWM facility to accept hazardous waste.]
 22. ["RCRA", "Resource Conservation and Recovery Act", "Subtitle C of RCRA", "RCRA Subtitle C", or "Subtitle C" when referring either to an operating permit or to the federal hazardous waste program as a whole, mean the "State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended" with the following exceptions:
 - a. Any reference to a specific provision of "RCRA", "Resource Conservation and Recovery Act", "Subtitle C of RCRA", "RCRA Subtitle C", or "Subtitle C";
 - b. References in §§ 260.10 (definition of "Act or RCRA") (see as incorporated by R18-8-260(E)); 260, Appendix I, (see as incorporated by R18-8-260(C)); 261, "Appendix IX, (see as incorporated by R18-8-261(A)); 262, Appendix, (see as incorporated by R18-8-262(A)); 270.1(a)(2) (see as incorporated by R18-8-270(A)); 270.2, (definition of "RCRA" (see as incorporated by R18-8-270(A)); and 270.51, "EPA-issued RCRA permit" (see as incorporated by R18-8-270(P)).]
 23. [Following any references to a specific provision of "RCRA", "Resource Conservation and Recovery Act", or "Subtitle C", the phrase "or any comparable provisions of the state Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended" shall be deemed to be added except in §§ 270.72(a)(5) and (b)(5) (see as incorporated by R18-8-270(A)).]
 24. ["RCRA § 3005(a) and (e)" means "A.R.S. § 49-922".]
 25. ["RCRA § 3007" means "A.R.S. § 49-922".]
 26. ["Recyclable Materials" mean hazardous wastes that are recycled.]
 27. ["Region" or "Region IX" means "state" or "state of Arizona".]
 28. ["Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, such as actions, operations, or milestone events, leading to compliance with the HWMA and these rules.]
 29. ["Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with such a facility or activity.]
 30. ["State", "authorized state", "approved state", or "approved program" means the state of Arizona with the following exceptions:

References at § 260.10, definitions of "person", "state", and "United States", (see as incorporated by R18-8-260(E)); 262 (see as incorporated by R18-8-262(A));

264.143(e)(1) (see as incorporated by R18-8-264(A));

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- 264.145(e)(1) (see as incorporated by R18-8-264(A)); 264.147(a)(1)(ii) (see as incorporated by R18-8-264(A)); 264.147(b)(1)(ii) (see as incorporated by R18-8-264(A)); 264.147(g)(2) (see as incorporated by R18-8-264(A)); 264.147(i)(4) (see as incorporated by R18-8-264(A)); 265.143(d)(1) (see as incorporated by R18-8-265(A)); 265.145(d)(1) (see as incorporated by R18-8-265(A)); 265.147(a)(1)(ii) (see as incorporated by R18-8-265(A)); 265.147(g)(2) (see as incorporated by R18-8-265(A)); 265.147(i)(4) (see as incorporated by R18-8-265(A)); and 270.2, definitions of "Approved program or Approved state", "Director", "Final authorization", "Person", and "state" (see as incorporated by R18-8-270(A)).]
31. ["The effective date of these regulations" means the following dates: "May 19, 1981" in §§ 265.112(a) and (d), 265.118(a) and (d), 265.142(a), and 265.144(a) (see as incorporated by R18-8-265); "November 19, 1981" in §§ 265.112(d) and 265.118(d) (see as incorporated by R18-8-265); and "January 26, 1983" in § 270.1(c) (see as incorporated by R18-8-270).]
32. ["TSD facility" means a "Hazardous Waste Management facility" or "HWM facility".]
- F. § 260.10, entitled "Definitions", as amended by subsection (E), also is amended as follows, with all definitions in § 260.10 (see as incorporated by R18-8-260), applicable throughout this Article unless specified otherwise.
1. "Act" or ["the Act" means the state Hazardous Waste Management Act or HWMA, except in R18-8-261(B) and R18-8-262(B).]
 2. "Administrator", "Regional Administrator", "~~Regional Administrator~~" or "state Director", or "Assistant Administrator for Solid Waste and Emergency Response" mean the [Director or the Director's authorized representative, except in §§ 260.10, definitions of "Administrator", "Regional Administrator", and "hazardous waste constituent" (see as incorporated by R18-8-260(E)); 261, Appendix IX (see as incorporated by R18-8-261(A)); 262, Subpart E; 262, Appendix (see as incorporated by R18-8-262); 264.12(a) (see as incorporated by R18-8-264(A)); 265.12(a) (see as incorporated by R18-8-265(A)); 268.5, 268.6, 268.42(b), and 268.44, which are nondelegable to the state of Arizona (see as incorporated by R18-8-268); 270.2, definitions of "Administrator", "Director", "Major facility", "Regional Administrator", and "State/EPA agreement" (see as incorporated by R18-8-270(A)); 270.3 (see as incorporated by R18-8-270(A)); 270.5 (see as incorporated by R18-8-270(A)); 270.10(e)(1), (2), and (4) (see as incorporated by R18-8-270(A) and R18-8-270(D)); 270.10(f) and (g) (see as incorporated by R18-8-270(A) and R18-8-270(E)); 270.11(a)(3) (see as incorporated by R18-8-270(A)); 270.14(b)(20) (see as incorporated by R18-8-270(A)); 270.32(b)(2) (see as incorporated by R18-8-270(N)); 270.51 (see as incorporated by R18-8-270(A)); 124.5(d) (see as incorporated by R18-8-271(D)); 124.6(e) (see as incorporated by R18-8-271(E)); 124.10(b) (see as incorporated by R18-8-271(I)).]
3. "Facility" [or "activity" means:
 - a. Any HWM facility or other facility or activity, including] all contiguous land, structures, appurtenances, and improvements on the land which are used for treating, storing, or disposing of hazardous waste, that is subject to regulation under the HWMA program. A facility may consist of several treatment, storage, or disposal operational units (e.g., or more landfills, surface impoundments, or combinations of them).
 - b. For the purposes of implementing corrective action under 40 CFR 264.101 (see as incorporated by R18-8-264), all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).
 4. "New HWM facility" or "new facility" means a HWM facility which began operation, or for which construction commenced, [after November 19, 1980].
 5. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation[, or a limited liability corporation], partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, [state agency, or an agent or employee thereof].
 6. "United States" means [Arizona except the following:
 - a. References in §§ 262.50, 262.51, 262.53(a), 262.54(c), 262.54(g)(2), 262.54(i), 262.55(a), 262.55(c), 262.56(a)(4), 262.60(a), and 262.60(b)(2) (see as incorporated by R18-8-262).
 - b. All references in Part 263 (see as incorporated by R18-8-263), except §§ 263.10(a) and 263.22(c).]
- G. §260.20(a), entitled "General" pertaining to rulemaking petitions, is replaced by the following:
- Where the Administrator of EPA has granted a rulemaking petition pursuant to 40 CFR 260.20(a), 260.21, or 260.22, the Director may accept such a determination and amend the Arizona regulations accordingly, provided that the Director determines such action to be consistent with the policies and purposes of the HWMA.
- H. §260.20(c) and (e) are amended by replacing "Federal Register" with "Arizona Administrative Register".
- I. §260.23, entitled "Petitions to amend 40 CFR 273 to include additional hazardous wastes" pertaining to rulemaking petitions, is amended as follows: (a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of part 273 of this Chapter may petition for a regulatory amendment under this Section, 40 CFR 260.20(b) through (e), and Subpart G of 40 CFR 273.
- H-J. No change.
- R18-8-261. Identification and Listing of Hazardous Waste**
- A. All of 40 CFR 261 and accompanying appendices, as amended as of July 1, 1994 1995 (and no future editions), with the exception of § 261.5(j), are incorporated herein by reference and modified by the following subsections of R18-8-261 and are on file with the DEQ and the Office of the Secretary of State.
 - B. No change.
 - C. No change.
 - D. § 261.4, entitled "Exclusions", paragraph (b)(6)(i), is amended as follows:
 - (i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Subpart D [(see as incorporated by R18-8-261)] due to the presence of chromium, which do not fail the test for the Toxicity

Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if [documentation is provided to the Director] by a waste generator or by waste generators that:

- (A) No change.
- (B) No change.
- (C) No change.

E. No change

F. § 261.5, entitled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators", paragraph (b) is amended as follows:

- (b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of [§ 261.5 (see as incorporated by R18-8-261)], a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under [R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271 of this Article], and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g), and (j) of [§ 261.5 (see as incorporated by R18-8-261)]. [However, the Director may require reports of any conditionally exempt small quantity generator or group of conditionally exempt small quantity generators regarding the treatment, storage, transportation, disposal, or management of hazardous waste if the hazardous waste of such generator or generators poses a substantial present or potential hazard to human health or the environment, when it is improperly treated, stored, transported, disposed, or otherwise managed.]

G. § 261.5, entitled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators", paragraph (f)(3) is amended as follows:

- (3) A conditionally exempt small quantity generator may either treat or dispose of [the] acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which is:
 - (i) Permitted under part 270 of this ~~chapter~~ Chapter [(see as incorporated by R18-8-270)];
 - (ii) In interim status under parts 270 and 265 of this ~~chapter~~ Chapter [(see as incorporated by R18-8-270 and R18-8-265)];
 - (iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under part 271 of this ~~chapter~~ Chapter;
 - (iv) Permitted, licensed, or registered by a state to manage municipal or industrial solid waste [and approved by the owner or operator of the solid waste facility to accept acute hazardous waste from conditionally exempt small quantity generators that have not been excluded from disposing of their waste at such a facility pursuant to applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791]; ~~or~~
 - (v) A facility which:
 - (A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
 - (B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; ~~or~~
 - (vi) For universal waste managed under part 273 of this Chapter [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to the requirements of part 273 of this Chapter.

H. § 261.5, entitled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators",

paragraph (g) is amended as follows:

- (g) In order for hazardous waste[, other than acute hazardous waste,] generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this [subsection], the generator ~~must~~ [shall] comply with the following requirements:

- (1) § 262.11 [(see as incorporated by R18-8-262)];
- (2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If [such generator] accumulates at any time more than a total of 1000 kilograms of hazardous wastes, all of those accumulated [hazardous] wastes are subject to regulation under the special provisions of part 262 applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 266, 268, and parts 270 and 124 of this ~~chapter~~ Chapter [(see as incorporated by R18-8-262, R18-8-263 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and the applicable notification requirements of Section 3010 of RCRA. The time period of § 262.34(d) [(see as incorporated by R18-8-262)] for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;
- (3) A conditionally exempt small quantity generator may either treat or dispose of [its] hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which is:
 - (i) Permitted under part 270 of this ~~chapter~~ Chapter [(see as incorporated by R18-8-270)];
 - (ii) In interim status under parts 270 and 265 of this ~~chapter~~ Chapter [(see as incorporated by R18-8-270 and R18-8-265)];
 - (iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this ~~chapter~~ Chapter;
 - (iv) Permitted, licensed, or registered by a state to manage municipal or industrial solid waste [and approved by the owner or operator of the solid waste facility to accept hazardous waste from conditionally exempt small quantity generators who have not been excluded from disposing of their waste at such a facility pursuant to applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791]; ~~or~~
 - (v) A facility which:
 - (A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
 - (B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; ~~or~~
 - (vi) For universal waste managed under part 273 of this Chapter [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to requirements of part 273 of this Chapter.

I. § 261.6, entitled "Requirements for recyclable materials", paragraphs (a)(1) through (3) are amended as follows:

- (a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this Section, except

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- for the materials listed in paragraphs (a)(2) and (3) of this Section. Hazardous wastes that are recycled [shall] be known as "recyclable materials."
- (2) The following recyclable materials are not subject to the requirements of this Section but are regulated under [40 CFR 266, subparts C, F, G, and H (see as incorporated by R18-8-266)] and all applicable provisions in parts 270 and 124 of this Chapter [(see as incorporated by R18-8-270 and R18-8-271)]:
- (i) Recyclable materials used in a manner constituting disposal (subpart C);
 - (ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O (see as incorporated by R18-8-264 and R18-8-265)] (subpart H);
 - (iii) Recyclable materials from which precious metals are reclaimed (subpart F);
 - (iv) Spent lead-acid batteries that are being reclaimed (subpart G).
- (3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124 (see as incorporated by R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and are not subject to the notification requirements of Section 3010 of RCRA:
- (i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:
 - (A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, ~~must~~ [shall] comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)-(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in subpart E of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;
 - (B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.
 - (ii) ~~Used batteries (or used battery cells) returned to a battery manufacturer for regeneration;~~
 - (iii)-(ii) Scrap metal;
 - (iv)-(iii) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12) (as incorporated by R18-8-261));
 - (v) ~~Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining~~

- facility;
- (vi)-(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801(A)(5)] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
 - (B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[,] production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801(A)(5)]; and
 - (C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under [A.R.S. § 49-801(A)(5)]; and
 - (vii)(v) Petroleum coke produced from petroleum refinery hazardous wastes containing oil ~~at the same facility at which such wastes were generated by the same person who generated the waste,~~ unless the resulting coke product exceeds or more of the characteristics of hazardous waste in part 261, subpart C [(see as incorporated by R18-8-261)].
- J. No change.
- K. § 261.11, entitled "Criteria for listing hazardous waste", paragraph (a) is amended as follows:
- (a) The [Director] shall list a solid waste as a hazardous waste only upon determining that the solid waste meets of the following criteria:
 - (1) It exhibits any of the characteristics of hazardous waste identified in subpart C [(see as incorporated by R18-8-261)].
 - (2) No change.
 - (3) It contains any of the toxic constituents listed in Appendix VIII [(see as incorporated by R18-8-261)] and, after considering the following factors, the [Director] concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed:
 - (i) No change.
 - (ii) No change.
 - (iii) No change.
 - (iv) No change.
 - (v) No change.
 - (vi) No change.
 - (vii) No change.
 - (viii) No change.
 - (ix) No change.
 - (x) No change.
 - (xi) No change.

L. No change.

R18-8-262. Standards Applicable to Generators of Hazardous Waste

- A. All of 40 CFR 262 and the accompanying appendix appendi-

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ees, as amended as of July 1, ~~1994~~ 1995, (and no future editions), are incorporated ~~herein~~ by reference and modified by the following subsections of R18-8-262, and are on file with the DEQ and the Office of the Secretary of State.

- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.

G. § 262.41, entitled "Biennial report", is amended as follows:

(a) A generator [shall] prepare and submit a single copy of [an annual] report to the [Director] by March 1 [for the preceding calendar] year. The [annual] report [shall] be submitted on [a form provided by the DEQ according to the instructions for the form, shall describe] generator activities during the previous [calendar] year, and shall include the following information:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

(5) A [waste] description, EPA hazardous waste number (from 40 CFR 261, subpart C or D) [(see as incorporated by R18-8-261), U.S. Department of Transportation] hazard class, [concentration, physical state,] and quantity of each hazardous waste[:

- i. No change.
- ii. No change.
- iii. No change.

- (6) No change.
- (7) No change.
- (8) No change.
- (9) No change.
- (10) No change.

(b) Any generator who treats, stores, or disposes of hazardous waste on-site, [and is subject to the HWM facility requirements of R18-8-264, R18-8-265, or R18-8-270,] shall submit [an annual] report covering those wastes in accordance with the provisions of 40 CFR 264.75 [(see as incorporated by R18-8-264(G)), and § 265.75 [(see as incorporated by R18-8-265 (G)].]

H. Manifests required in 40 CFR 262, subpart B, entitled "The Manifest", (see as incorporated by R18-8-262) shall be submitted to the DEQ in the following manner:

1. A generator initiating a shipment of hazardous waste required to be manifested shall submit to the DEQ, no later than 45 days following the end of the month of shipment, copy of each manifest with the signature of that generator and transporter, and the signature of the owner or operator of the designated facility, for any shipment of hazardous waste transported or delivered within that month. If a conforming manifest is not available, the generator shall submit an Exception Report in compliance with § 262.42 (see as incorporated by R18-8-262).
2. A generator shall designate on the manifest in item (I) "Waste No.", the EPA hazardous waste number or numbers for each hazardous waste listed on the manifest.

I. No change.

J. § 262.44, entitled "Special requirements for generators of between 100 and 1000 kg/mo.", is amended as follows:

A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the requirements of 40 CFR 262, subpart D, except for the recordkeeping requirements in paragraphs (a), (c), and (d) in § 262.40[,] and the requirements of §§ 262.42 and 262.43(see as incorporated

rated by R18-8-262).

K. A generator who accumulates ignitable, reactive, or incompatible waste shall comply with 40 CFR 265.17(a) (see as incorporated by R18-8-265(A)).

L. Any generator who must comply with 40 CFR 262.34(a)(1) (see as incorporated by R18-8-262) shall keep a written log of the inspections of container, tank, drip pad, and containment building areas and for the containers, tanks, and other equipment located in these storage areas in accordance with 40 CFR 265.174, 265.195, 265.444, and 265.1101(c)(4) (see as incorporated by R18-8-265). The inspection log shall be kept by the generator for 3 years from the date of the inspection. The inspection log shall be filled in after each inspection and shall include the following information: inspection date, inspector's name and signature, and remarks or corrections[.

R18-8-263. Standards Applicable to Transporters of Hazardous Waste

A. All of 40 CFR 263, as amended as of July 1, ~~1994~~ 1995, (and no future editions), is incorporated ~~herein~~ by reference and modified by the following subsections of R18-8-263, and is on file with the DEQ and the Office of the Secretary of State.

- B. No change.
- C. No change.

D. Manifests required in 40 CFR 263, subpart B, entitled "Compliance With the Manifest System and Recordkeeping", (see as incorporated by R18-8-263) shall be submitted to the DEQ in the following manner:

[A transporter of hazardous waste, unless such hazardous waste shipment originated outside of the state of Arizona, shall submit to the DEQ, no later than 30 days following the end of the month of shipment, copy of each manifest, including the signature of that transporter, for any shipment of hazardous waste transported or delivered within that month.]

E. No change.

R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

A. All of 40 CFR 264 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995, (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149 - 264.150, and 264.301(l), are incorporated ~~herein~~ by reference, and modified by the following subsections of R18-8-264, and are on file with the DEQ and the Office of the Secretary of State. In addition, all amendments to Part 264 and its appendices as amended at 60 FR 56952, on November 13, 1995, are incorporated by reference and on file with the DEQ and the Office of Secretary of State.

B. § 264.1, entitled "Purpose, scope and applicability", paragraph (g)(1) is amended as follows:

- (1) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-8-512, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-264] pursuant to § 261.5 [(see as incorporated by R18-8-261)];

C. No change.

D. No change.

E. No change.

F. No change.

G. No change.

(a) No change.

(b) No change.

(c) No change.

(d) No change.

- (e) No change.
- (f) No change.
- (g) The most recent closure cost estimate under § 264.142, [(see as incorporated by R18-8-264)], and for disposal facilities, the most recent post-closure cost estimate under § 264.144, [(see as incorporated by R18-8-264)];
- (h) No change.
- (i) No change.
- (j) No change.
- (k) No change.
- (l) [If the TSD facility is also a generator, the complete generator annual report as required by §262.41 (see as incorporated by R18-8-262).]
- H. Manifests required in 40 CFR 264, Subpart E, entitled "Manifest System, Recordkeeping, and Reporting", (see as incorporated by R18-8-264) shall be submitted to the DEQ in the following manner:
 - [1. The TSD facility receiving off-site shipments of hazardous wastes required to be manifested shall submit to the DEQ, no later than 30 days following the end of the month of shipment, (1) copy of each manifest with the signature, in accordance with § 264.71(a)(1) (see as incorporated by R18-8-264), of the owner or operator of the facility, or agent, for any shipment of hazardous waste received within that month.
 - 2. If a facility receiving hazardous waste from off-site is also a generator, the owner or operator ~~must~~ [shall] also submit generator manifests as required by R18-8-262(H).]
- I. § 264.93, entitled "Hazardous constituents", paragraph (c) is amended as follows:
 - (c) In making any determination under [§ 264.93(b) (see as incorporated by R18-8-264)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] § 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].
- J. § 264.94, entitled "Concentration limits", paragraph (c) is amended as follows:
 - (c) In making any determination under [§ 264.94(b) (see as incorporated by R18-8-264)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] § 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].
- K. No change.
- L. No change.
- M. No change.
- N. No change.

R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

- A. All of 40 CFR 265 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, are incorporated ~~herein~~ by reference and modified by the following subsections of R18-8-265, and are on file with the DEQ and the Office of the Secretary of State. In addition, all amendments to Part 265 and its appendices as amended at 60 FR 56952, on November 13, 1995, are incorporated by reference and on file with the DEQ and the Office of Secretary of State.
- B. § 265.1, entitled "Purpose, scope, and applicability", paragraph (c)(5) is amended as follows:
 - (5) The owner or operator of a facility [with operational

approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-8-512, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-265, pursuant to § 261.5 (see as incorporated by R18-8-261)];

- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
 - (a) No change.
 - (b) No change.
 - (c) No change.
 - (d) No change.
 - (e) No change.
 - (f) Monitoring data under § 265.94(a)(2)(ii) and (iii), and (b)(2) [(see as incorporated by R18-8-265)], where required;
 - (g) The most recent closure cost estimate under § 265.142 [(see as incorporated by R18-8-265)], and, for disposal facilities, the most recent post-closure cost estimate under § 265.144 [(see as incorporated by R18-8-265,)];
 - (h) No change.
 - (i) No change.
 - (j) No change.
 - (k) No change.
- H. Manifests required in 40 CFR 265, subpart E, entitled "Manifest System, Recordkeeping, and Reporting", (see as incorporated by R18-8-265) shall be submitted to the DEQ in the following manner:

The TSD facility receiving off-site shipments of hazardous wastes required to be manifested shall submit to the DEQ, no later than 30 days following the end of the month of shipment, copy of each manifest with the signature, in accordance with § 265.71(a)(1) (see as incorporated by R18-8-265), of the owner or operator of the facility, or agent, for any shipment of hazardous waste received within that month.
- I. § 265.90, entitled "Applicability", ~~paragraph~~ paragraphs (a) and (d)(1), and § 265.93, entitled "Preparation, evaluation, and response", paragraph (3) (see as incorporated by R18-8-265), are amended by deleting the following phrase: "within year"; and § 265.90, entitled "Applicability", paragraph ~~(d)(2)~~ (d)(2) (see as incorporated by R18-8-265), is amended by deleting the following phrase: "Not later than year".
- J. § 265.193, entitled "Containment and detection of releases" (see as incorporated by R18-8-265), is amended by adding the following: For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall insure that:
 - 1. No change.
 - 2. No change.
 - 3. No change.
- K. No change.
- L. No change.

R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities

- A. All of 40 CFR 266, and accompanying appendices as amended as of July 1, ~~1994~~ 1995 (and no future editions), ~~is~~ are incorporated ~~herein~~ by reference and ~~is~~ are on file with the DEQ and the Office of the Secretary of State.
- B. § 266.100, entitled "Applicability" paragraph (b) is amended as follows:
 - (b) The following hazardous wastes and facilities are not

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subject to regulation under this subpart:

- (1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 [(see as incorporated by R18-8-261)] of this ~~chapter~~ Chapter. Such used oil is subject to regulation under [A.R.S. §§ 49-801 through 49-815] rather than this subpart;
- (2) No change
- (3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(~~iv~~)-(viii)(iv)-(v) [(see as incorporated by R18-8-261)] of this ~~chapter~~ Chapter, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under § 261.5 [(see as incorporated by R18-8-261)] of this ~~chapter~~ Chapter; and
- (4) No change.

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, as amended as of July 1, ~~1994~~ 1995 (and no future editions), with the exception of Part 268, Subpart B, are incorporated ~~herein~~ by reference and are on file with the DEQ and the Office of the Secretary of State.

R18-8-270. The Hazardous Waste Permit Program

- A. All of 40 CFR 270, as amended as of July 1, ~~1994~~ 1995 (and no future editions), with the exception of §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64, is incorporated ~~herein~~ by reference and modified by the following subsections of R18-8-270 and is on file with the DEQ and the Office of the Secretary of State.
- B. § 270.1, entitled "Purpose and scope of these regulations", paragraph (b) is replaced by the following:
 1. [After the effective date of these regulations the treatment, storage, or disposal of any hazardous waste is prohibited except as follows:
 - a. As allowed under § 270.1(c)(2) and (3) (see as incorporated by R18-8-270);
 - b. No change.
 - c. At an existing facility accorded interim status under the provisions of § 270.70 (see as incorporated by R18-8-270).
 2. The direct disposal or discharge of hazardous waste into or onto any of the following is prohibited:
 - a. Waters of the state as defined in A.R.S. § 49-201(31), excluding surface impoundments as defined in § 260.10 (see as incorporated by R18-8-260); and
 - b. No change.
- C. No change.
- D. No change.
- E. No change.
- F. § 270.10(g), entitled "Updating permit applications", subparagraph (1)(iii), is amended as follows:
 - (iii) As necessary to comply with provisions of § 270.72 [(see as incorporated by R18-8-270)] for changes during interim [status]. Revised Part A applications necessary to comply with the provisions of § 270.72 [(see as incorporated by R18-8-270)] shall be filed with the [Director.]
- G. § 270.10, entitled "General application requirements", is amended by adding the following:
 - [1. When submitting any of the following applications, an applicant shall remit to the DEQ a permit application fee of \$10,000:
 - a. Initial Part B application submitted pursuant to §§ 270.10 and 270.51(a)(1) (see as incorporated by R18-8-270).

- b. Part B permit renewal application submitted pursuant to § 270.10(h) (see as incorporated by R18-8-270).
 - c. Application for a Class 3 Modification according to § 270.42 (see as incorporated by R18-8-270).
 - d. Application for a research, development, and demonstration permit.
2. No change.
 3. No change.
 - a. An application for a modification of a Part B permit pursuant to § 270.41 (see as incorporated by R18-8-270).
 - b. An application for a Class 2 modification of a permit submitted after permit issuance, according to § 270.42 (see as incorporated by R18-8-270).
 - c. An application for approval of a final closure plan that is not submitted as part of a Part B application, including the review and approval of the closure report.
 4. With an application for a partial closure plan for a facility, the applicant shall remit to the DEQ a fee of \$2,500 for each hazardous waste management unit involved in the partial closure plan or \$10,000, whichever is less. If the reasonable cost of processing the application, including review and approval of the closure report, is more than the initial fee paid, the applicant shall be billed for the difference, and such difference shall be paid in full before the DEQ issues at the time DEQ completes review and approval of the closure report associated with the permit. If the reasonable cost is less than the fee paid by the applicant, DEQ shall refund the difference within 45 days of the closure report review and approval associated with the permit.
 5. The fee for a land treatment demonstration permit issued under § 270.63 (see as incorporated by R18-8-270) for hazardous waste shall apply toward the \$10,000 permit fee for a Part B land treatment permit when the owner or operator seeks to treat or dispose of hazardous waste in land treatment units based on the successful treatment demonstration (see as incorporated by R18-8-270).
 6. An applicant shall remit to the DEQ a permit application fee of \$1,000 for any of the following:
 - a. An application for a transfer of a Part B permit to a different owner or operator pursuant to § 270.40 (see as incorporated by R18-8-270).
 - b. An application for a class 1 permit modification according to § 270.42 (see as incorporated by R18-8-270) that is required as a consequence of mitigating hazardous waste compliance violations. If the reasonable cost of processing the transfer application or modification is greater than \$1,000, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application.
 7. No change.
 8. No change.
 9. No change.
 - H. No change.
 - I. No change.
 - J. § 270.14, entitled "Contents of part B: General requirements", paragraph (b) is amended by adding the following:
 - [(22) No change.
 - (23)(i) A signed statement, submitted on a form supplied by the DEQ that demonstrates:
 - (A) No change.
 - (B) No change.

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- (ii) Failure to comply with paragraph (i) above, the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 (see as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (see as incorporated by R18-8-271), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 (see as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (see as incorporated by R18-8-271).]
- K. § 270.30, entitled "Conditions applicable to all permits" paragraph (1)(10) is amended as follows:
- (10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under [§ 270.30(1)(4),(5), and (6) (see as incorporated by R18-8-270)] at the same time monitoring [(including annual)] reports are submitted. The reports shall contain the information listed in [§ 270.30(1)(6) (see as incorporated by R18-8-270)].
- L. § 270.30, entitled "Conditions applicable to all permits" paragraph (1) is amended by adding the following:
[All reports listed above (see as incorporated by R18-8-270) shall be submitted to the Director in such a manner that the reports are received within the time periods required under this Article.]
- M. No change.
- N. No change.
- O. No change.
- P. No change.
- Q. § 270.65, entitled "Research, development, and demonstration permits", is amended as follows:
- (a) The [Director] may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under part 264 or 266 [see as incorporated by R18-8-264 and R18-8-266]. [A research, development, and demonstration] permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:
- (1) No change.
 - (2) No change.
 - (3) No change.
 - (b) No change.
 - (c) No change.
 - (d) No change.
- R18-8-271. Procedures for Permit Administration**
- A. All of 40 CFR 124 and the accompanying appendix as amended as of July 1, ~~1994~~ 1995 (and no future editions), relating to HWM facilities, with the exception of §§ 124.1(b) through (e), 124.2, 124.4, 124.16, 124.20 and 124.21, ~~is~~ are incorporated ~~herein~~ by reference and modified by the following subsections of R18-8-271 and ~~is~~ are on file with the DEQ and the Office of the Secretary of State.
- B. § 124.1, entitled "Purpose and scope", paragraph (a) is replaced by the following:
- [This Section contains the DEQ procedures for issuing, modifying, revoking and reissuing, or terminating all hazardous waste management facility permits. These rules describe the procedures the DEQ shall follow in reviewing permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. This Section also includes procedures for assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. The procedures of this Section also apply to denial of a permit for the active life of a RCRA HWM facility or unit under § 270.29 (see as incorporated by R18-8-270(A)).]
- C. § 124.3, entitled "Application for a permit", is replaced by the following:
- [(a) (1) Any person who requires a permit under this Article shall complete, sign, and submit to the Director an application for each permit required under § 270.1 (see as incorporated by R18-8-270). Applications are not required for RCRA permits-by-rule in § 270.60 (see as incorporated by R18-8-270).
(2) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. (Refer to §§ 270.10 and 270.13 see as incorporated by R18-8-270).
(3) Permit applications shall comply with the signature and certification requirements of § 270.11, see as incorporated by R18-8-270.
(b) Reserved.
(c) No change.
(d) No change.
(e) No change.
(f) No change.
(g) No change.
- D. § 124.5, entitled "Modification, revocation, and reissuance, or termination of permits", is replaced by the following:
- (a) Permits may be modified, revoked, and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked, and reissued, or terminated for the reasons specified in §§ 270.41 or 270.43(see as incorporated by R18-8-270). All requests shall be in writing and shall contain facts or reasons supporting the request.
- (b) If the Director decides the request is not justified, the Director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.
- (c) Modification, revocation or reissuance of permits procedures.
- (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 270.41 or 270.42(c) (see as incorporated by R18-8-270), the Director shall prepare a draft permit under § 124.6 (see as incorporated by R18-8-271(E)), incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.
 - (2) In a permit modification under this [subsection], only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. The permit modification shall have the same expiration date as the unmodified permit. When a permit is revoked and reissued under this subsection, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit

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until a new final permit is reissued.

- (3) "Classes 1 and 2 modifications" as defined in § 270.42 (see as incorporated by R18-8-270) are not subject to the requirements of this subsection.
 - (d) If the Director tentatively decides to terminate a permit under § 270.43 (see as incorporated by R18-8-270), the Director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6 (see as incorporated by R18-8-271(E)). In the case of permits that are processed or issued jointly by both the DEQ and the EPA, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibilities from the EPA to the state.
 - (e) All draft permits, including notices of intent to terminate, prepared under this subsection by the Director shall be based on the administrative record as defined in § 124.9 (see as incorporated by R18-8-271(H)).
- E. § 124.6, entitled "Draft permits", is replaced by the following:
- (a) No change.
 - (b) No change.
 - (c) Reserved.
 - (d) If the Director decides to prepare a draft permit, the Director shall prepare a draft permit that contains the following information:
 - (1) All conditions under §§ 270.30 and 270.32 (see as incorporated by R18-8-270), unless not required under 40 CFR 264 and 265 (see as incorporated by R18-8-264 and R18-8-265);
 - (2) All compliance schedules under § 270.33 (see as incorporated by R18-8-270);
 - (3) All monitoring requirements under § 270.31 (see as incorporated by R18-8-270); and
 - (4) Standards for treatment, storage, and/or disposal and other permit conditions under § 270.30 (see as incorporated by R18-8-270).
 - (e) All draft permits prepared by the DEQ under this subsection shall be accompanied by a statement of basis (§ 124.7, see as incorporated by R18-8-271(F)) or fact sheet (§ 124.8, see as incorporated by R18-8-271(G)), and shall be based on the administrative record (§ 124.9, see as incorporated by R18-8-271(H)), publicly noticed (§ 124.10, see as incorporated by R18-8-271(I)) and made available for public comment (§ 124.11, see as incorporated by R18-8-271(J)). The Director shall give notice of opportunity for a public hearing (§ 124.12, see as incorporated by R18-8-271(K)), issue a final decision (§ 124.15, see as incorporated by R18-8-271(N)) and respond to comments (§ 124.17, see as incorporated by R18-8-271(O)).
- F. § 124.7, entitled "Statement of basis", is replaced by the following:
- The DEQ shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8, (see as incorporated by R18-8-271(G)), is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.
- G. § 124.8, entitled "Fact sheet", is replaced by the following:
- (a) No change.
 - (b) No change.
 - (1) No change.
 - (2) No change.
 - (3) Reserved.
 - (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9, (see as incorporated by R18-8-271(H));
 - (5) No change.
 - (6) A description of the procedures for reaching a final decision on the draft permit including:
 - (i) The beginning and ending dates of the comment period under § 124.10 (see as incorporated by R18-8-271(I)) and the address where comments shall be received;
 - (ii) No change.
 - (iii) No change.
 - (7) No change.
 - (8) Reserved.
- H. § 124.9 entitled "Administrative record for draft permits is replaced by the following:
- (a) The provisions of a draft permit prepared under § 124.6 (see as incorporated by R18-8-271(E)) shall be based on the administrative record defined in this subsection.
 - (b) For preparing a draft permit under § 124.6 (see as incorporated by R18-8-271(E)), the record shall consist of:
 - (1) No change.
 - (2) No change.
 - (3) The statement of basis under § 124.7 (see as incorporated by R18-8-271(F)) or fact sheet under § 124.8 (see as incorporated by R18-8-271(G));
 - (4) No change.
 - (5) No change.
 - (6) Reserved.
 - (c) No change.
 - (d) No change.
 - (e) No change.
- I. § 124.10, entitled "Public notice of permit actions and public comment period", is replaced by the following:
- (a) Scope.
 - (1) The Director shall give public notice that the following actions have occurred:
 - (i) A permit application has been tentatively denied under § 124.6(b) (see as incorporated by R18-8-271(E));
 - (ii) A draft permit has been prepared under § 124.6(d) (see as incorporated by R18-8-271(E)); and
 - (iii) A hearing has been scheduled under § 124.12 (see as incorporated by R18-8-271(K)).
 - (2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b) (see as incorporated by R18-8-271(D)). Written notice of that denial shall be given to the requester and to the permittee.
 - (3) Public notices may describe more than permit or permit actions.
 - (b) No change.
 - (c) No change.
 - (d)(1) No change.
 - (i) No change.
 - (ii) No change.
 - (iii) No change.
 - (iv) No change.
 - (v) A brief description of the comment procedures

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required by §§ 124.11 (see as incorporated by R18-8-271(J)) and 124.12 (see as incorporated by R18-8-271(K)) and the time and place of any hearing that shall be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

- (vi) The location of the administrative record required by § 124.9 (see as incorporated by R18-8-271(H)), the times at which the record shall be open for public inspection, and a statement that all data submitted by the applicant (except for confidential information pursuant to A.R.S. § 49-928) is available as part of the administrative record;

(vii) No change.

(viii) Reserved.

(ix) No change

- (2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this subsection, the public notice of a hearing under § 124.12 (see as incorporated by R18-8-271(K)) shall contain the following information:

(i) No change

(ii) No change

(iii) No change

(iv) Reserved.

(e) No change

- J. § 124.11, entitled "Public comments and requests for public hearings", is replaced by the following:

During the public comment period provided under § 124.10 (see as incorporated by R18-8-271(I)), any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 124.17 (see as incorporated by R18-8-271(O)).

- K. § 124.12, entitled "Public hearings", is replaced by the following:

(a)(1) No change.

(2) No change.

- (3) The Director shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing has been received within 45 days of public notice under § 124.10(b)(1) (see as incorporated by R18-8-271(I)). Whenever possible the Director shall schedule a hearing under this subsection at a location convenient to the nearest population center to the proposed facility.

- (4) Public notice of the hearing shall be given as specified in § 124.10 (see as incorporated by R18-8-271(I)).

(b) Reserved.

- (c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 124.10 see as incorporated by R18-8-271(I)) shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(d) No change.

(e) Reserved.

- L. § 124.13, entitled "Obligation to raise issues and provide

information during the public comment period", is replaced by the following:

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10, (see as incorporated by R18-8-271(I)). Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the DEQ as directed by the Director.

- M. § 124.14, entitled "Reopening of the public comment period", is replaced by the following:

(a)(1) No change.

- (2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) (see as incorporated by R18-8-271(M)) shall apply.

(3) No change.

- (4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this subsection. Commenters may request longer comment periods and they shall be granted under § 124.10 (see as incorporated by R18-8-271(I)) to the extent they appear necessary.

- (b) If any data, information, or arguments submitted during the public comment period, including information or arguments required under § 124.13 (see as incorporated by R18-8-271(L)), appear to raise substantial new questions concerning a permit, the Director may take or more of the following actions:

- (1) Prepare a new draft permit, appropriately modified, under § 124.6 (see as incorporated by R18-8-271(E));

- (2) Prepare a revised statement of basis under § 124.7 (see as incorporated by R18-8-271(F)), a fact sheet or revised fact sheet under this § 124.8 (see as incorporated by R18-8-271(G)), and reopen the comment period under this subsection; or,

- (3) Reopen or extend the comment period under § 124.10 (see as incorporated by R18-8-271(I)) to give interested persons an opportunity to comment on the information or arguments submitted.

- (c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 (see as incorporated by R18-8-271(I)) shall define the scope of the reopening.

(d) Reserved.

- (e) Public notice of any of the above actions shall be issued under § 124.10 (see as incorporated by R18-8-271(I)).

- N. § 124.15, entitled "Issuance and effective date of permit", is replaced by the following:

- (a) After the close of the public comment period under § 124.10 (see as incorporated by R18-8-271(I)) on a draft permit, the Director shall issue a final permit decision or

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a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 (see as incorporated by R18-8-270(A)). The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit or a decision to terminate a permit. For purposes of this subsection, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

- (b) A final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 (see as incorporated by R18-8-270(A)) shall become effective on a date specified by the Director in the final permit notice.
 - (1) Reserved.
 - (2) Reserved.
 - (3) Reserved.

O. § 124.17, entitled "Response to comments", is replaced by the following:

- (a) At the time that any final decision to issue a permit is made under § 124.15 (see as incorporated by R18-8-271(N)), the Director shall issue a response to comments. This response shall:
 - (1) No change.
 - (2) No change.
- (b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18 (see as incorporated by R18-8-271(P)). If new points are raised or new material supplied during the public comment period, the DEQ may document its response to those matters by adding new materials to the administrative record.
- (c) No change.

P. § 124.18, entitled "Administrative record for final permit" is replaced by the following:

- (a) The Director shall base final permit decisions under § 124.15 (see as incorporated by R18-8-271(N)) on the administrative record defined in this subsection.
- (b) No change.
 - (1) All comments received during the public comment period provided under § 124.10 (see as incorporated by R18-8-271(I)), including any extension or reopening under § 124.14, (see as incorporated by R18-8-271(M));
 - (2) The tape or transcript of any ~~hearings(s)~~ hearing(s) held under § 124.12 (see as incorporated by R18-8-271(K));
 - (3) No change.
 - (4) The response to comments required by § 124.17 (see as incorporated by R18-8-271(O)) and any new material placed in the record under that subsection;
 - (5) Reserved.
 - (6) No change.
 - (7) No change.
- (c) No change.
- (d) This subsection applies to all final permits when the draft permit was subject to the administrative record requirement of § 124.9 (see as incorporated by R18-8-271(H)).
- (e) Material readily available at the DEQ, or published mate-

rials which are generally available and which are included in the administrative record under the standards of this subsection or of § 124.17 (see as incorporated by R18-8-271(O)), ("Response to comments"), need not be physically included in the same file as the rest of the record as long as the materials and their location are specifically identified in the statement of basis or fact sheet or in the response to comments.

Q. § 124.19, entitled "Appeal of RCRA, UIC, and PSD permits", is replaced by the following:

- (a) Within 30 days after a RCRA final permit decision (or a decision under § 270.29 (see as incorporated by R18-8-270(A)) to deny a permit for the active life of a RCRA hazardous waste management facility or unit) has been issued under § 124.15 (see as incorporated by R18-8-271(N)), any person who filed comments on that draft permit or participated in the public hearing may petition the Director to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this subsection begins with the service of notice of the Director's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) and when appropriate, a showing that the condition in question is based on:
 - (1) No change.
 - (2) No change.
- (b) No change.
- (c) No change.
- (d) No change.

R18-8-273. Standards for Universal Waste Management
All of 40 CFR 273 as amended as of July 1, 1995 (and no future editions), is incorporated by reference and is on file with the DEQ and the Office of the Secretary of State.

R18-8-280. Compliance

- A. No change.
- B. No change.
- C. No change.
- D. Site assessment plan.
 - 1. No change.
 - a. No change.
 - b. No change.
 - c. Visual observation of unauthorized disposal or discharges which cannot be verified pursuant to § 262.11 (see as incorporated by R18-8-262), § 264.13 (see as incorporated by R18-8-264), or § 265.13 (see as incorporated by R18-8-265) as not containing a hazardous waste or hazardous waste constituents.
 - d. No change.
- 2. No change.
- 3. No change.
- 4. No change.
- 5. No change.